

ANTOINETTE CARTER

IBLA 78-492

Decided October 12, 1978

Appeal from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting applications for leases of geothermal resources N-17472, N-17473, N-17474.

Affirmed.

1. Geothermal Leases: Applications: Generally—Geothermal Leases: Lands Subject to—Wildlife Refuges and Projects: Generally

An application for lease of geothermal resources within a wildlife refuge is properly rejected because leasing of such areas is specifically prohibited by the Geothermal Resources Act and 43 CFR 3201.1-6.

APPEARANCES: Antoinette Carter, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Antoinette Carter has appealed from a decision of the Nevada State Office, BLM, dated May 22, 1968, which rejected her applications to lease geothermal resources N-17472 and N-17474. She also appeals from a decision of the same date which rejected in part her lease application N-17473. These applications were rejected because the lands applied for are within a wildlife refuge and not subject to leasing.

Appellant claims the decisions are inconsistent and arbitrary stating:

The Bureau of Land Management has already issued Geothermal leases in this wildlife refuge. See Geothermal Lease No. N-16689 issued to a Mr. Franklin Allen. These lands are in T 22 N R 30 MDM Sections 2, 10, 14, and 22.

Denying the applicant a lease on ground in an identical area is an injustice.

[1] The rejection of these applications was proper where the record shows that the applied for lands are included in the Fallon Wildlife Refuge. As the BLM correctly indicated leasing of lands in Wildlife refuges is prohibited by the requirement of 43 CFR 3201.1-6. Moreover, the governing statute expressly prohibits the issuance of geothermal leasing of refuge lands. 30 U.S.C. § 1014(c) (1976) provides, in part:

(c) Geothermal leases under this chapter shall not be issued * * * (3) for lands in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction * * *.

Appellant cites the lease of Franklin Allen, N-16689, for the same area. The record shows that this lease erroneously issued November 1, 1977. The lease was subsequently held for cancellation by the BLM June 21, 1978, when it was discovered that the leased lands were located within the Fallon Wildlife Refuge.

In any event, appellant's lease application must stand on its own merits and the fact that another lease was mistakenly issued in the same area is of no consequence to her case. See George Brennan, Jr., 1 IBLA 4, 6 (1970). As Justice Jackson said in United States v. Bryan, 339 U.S. 323, 346 (1950), "Of course it is embarrassing to confess a blunder, it may prove more embarrassing to adhere to it."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

